MARLIN BTE RAJIMAN & 4 ORS.

v.

MAA SERVICES SDN. BHD.

SUPREME COURT, KUALA LUMPUR
TUN DATO' SERI HAJI ABDUL HAMID BIN HAJI OMAR LP, TAN SRI DATO' HAJI MOHD EUSOFF B. CHIN, DATUK WIRA WAN YAHYA BIN PAWAN TEH SCJJ
[CIVIL APPEAL NO. 02-101-1992]
6 MAY 1994

INDUSTRIAL RELATIONS: Retrenchment - Whether retrenchment amounted to unfair dismissal - Retrenchment benefits paid by employer - Whether retrenched employees estopped from questioning propriety of retrenchment in Industrial Court - Whether principle of estoppel applicable to industrial adjudication - Industrial Relations Act 1967, s. 30(5) - Industrial Court Rules 1967, ss. 22(1) & (2).

This was an appeal by the appellants against the order of the High Court refusing their application for *certiorari* to quash the decision of the Industrial Court which ruled, in effect, that the appellants had been properly retrenched by the respondent. The facts showed that in coming to its finding the Industrial Court had only acceded to the preliminary objection taken by the respondent that the appellants were estopped from raising the issue as they had been paid retrenchment benefits by the respondent. Apparently the High Court ruled that in so deciding the Industrial Court was committing an error going to jurisdiction by virtue of s. 30(5) of the Industrial Relations Act 1967, but confirmed the retrenchment nevertheless on the ground that despite committing the error the Industrial Court had also considered the dispute on merits. Hence, this appeal.

Held:

[1] The Industrial Court had clearly committed an error going to jurisdiction as estoppel does not, under s. 30(5) of the Industrial Relations Act 1967, apply to industrial adjudication.

[2] By r. 22(1) and (2) of the Industrial Court Rules 1967 the Industrial Court is required to call upon the parties to adduce evidence if any to support their claims. The record in this case shows that, because of the preliminary objection and contrary to the aforesaid requirement of r. 22, the Industrial Court had only heard arguments based on the record and the pleadings without giving the parties the opportunity to adduce their respective evidence.

[3] The Industrial Court should not have dismissed the claim purely on the ground of technicalities. The Court should have instead given the parties the opportunity to adduce evidence and thereupon decide whether the termination was the result of genuine retrenchment exercise or whether it was in fact dismissal without just cause. To determine this issue it is necessary for the Industrial Court to investigate and analyse the facts before applying the law. This the Industrial Court had failed to do and that is an error of law affecting its jurisdiction.

[Appeal allowed. Dispute remitted to Industrial Court for rehearing].

[Bahasa Malaysia Translation of Headnote]

PERHUBUNGAN INDUSTRI: Pemberhentian Kerja - Sama ada pemberhentian kerja berupa penyingkiran yang tidak adil - Faedah pemberhentian kerja dibayar oleh majikan - Sama ada pekerja-pekerja yang diberhentikan itu diestopkan daripada mempersoalkan kewajaran pemberhentian kerja dalam Mahkamah Perusahaan - Sama ada prinsip estopel terpakai kepada adjudikasi perusahaan - Akta Perhubungan Industri 1967, s. 30(5) - Peraturan-peraturan Mahkamah Perusahaan 1967, ss. 22(1) & (2).

Ini ialah suatu rayuan oleh para perayu terhadap perintah Mahkamah Tinggi yang menolak permohonan mereka untuk *certiorari* bagi membatalkan keputusan Mahkamah Perusahaan yang memutuskan bahawa para perayu telah diberhentikan kerja dengan sewajarnya oleh responden. Fakta-fakta menunjukkan bahawa dalam mencapai kedapatannya, Mahkamah Perusahaan hanya bersetuju kepada bantahan awal yang dibuat oleh responden bahawa para perayu adalah diestopkan daripada membangkitkan sebarang isu memandangkan mereka telah dibayar faedah pemberhentian kerja oleh responden. Mahkamah Tinggi memutuskan bahawa dalam membuat keputusan sebegitu, Mahkamah Perusahaan telah melakukan suatu kesilapan, di bawah s. 30(5) Akta Perhubungan Industri 1967, dengan menggunakan bidang kuasa tetapi mengesahkan pemberhentian kerja tersebut atas alasan bahawa walaupun melakukan kesilapan tersebut, Mahkamah Perusahaan

juga telah mempertimbangkan pertikaian tersebut atas merit. Maka, rayuan ini pun dibuat.

Diputuskan:

[1] Mahkamah Perusahaan jelas sekali telah melakukan suatu kesilapan dengan menggunakan bidang kuasa memandangkan estopel tidak, di bawah s. 30(5) Akta Perhubungan Industri 1967, terpakai ke atas adjudikasi industri.

[2] Melalui peraturan 22(1) dan (2), Peraturan-peraturn Mahkamah Perusahaan 1967, Mahkamah Perusahaan adalah dikehendaki memanggil pihak-pihak berkenaan untuk mengemukakan keterangan, jika ada, untuk menyokong tuntutan mereka. Rekod kes ini menunjukkan bahawa, akibat bantahan awal tersebut dan bertentangan kepada kehendak peraturan 22 yang tersebut di atas, Mahkamah Perusahaan hanya mendengar penghujahan berdasarkan kepada rekod dan pliding tanpa memberikan peluang kepada pihak-pihak berkenaan untuk mengemukakan keterangan masing-masing.

[3] Mahkamah Perusahaan tidak sepatutnya menolak tuntutan tersebut semata-mata atas alasan teknikal. Sebaliknya, Mahkamah patut memberikan peluang kepada pihak-pihak berkenaan untuk mengemukakan keterangan dan selepas itu memutuskan sama ada pemberhentian kerja tersebut adalah akibat amalan pemberhentian kerja yang sebenar atau sebaliknya merupakan penyingkiran tanpa sebab yang adil. Untuk menentukan isu ini, adalah perlu untuk Mahkamah Perusahaan menyiasat dan menganalisa fakta-faktanya sebelum menggunakan undang-undang. Ini gagal dilakukan oleh Mahkamah Perusahaan dan merupakan suatu kesilapan undang-undang yang menjejaskan bidang kuasanya.

[Rayuan dibenarkan. Pertikaian dirujuk kembali kepada Mahkamah Perusahaan untuk bicara semula].

Case referred to:

Hotel Malaya Sdn. Bhd. & Anor. v. National Union of Hotel, Bar & Restaurant Workers & Anor. [1982] 2 MLJ 237 ***(refd)***

Legislation referred to:

Industrial Court Rules 1967, r. 22(1), (2)
Industrial Relations Act 1967, s. 30(5)

For the appellants - B. Lobo; M/s. Lobo & Associates
For the respondent - Mazlinda bt. Makhzan (Chow Kok Ling with her); M/s. Ng Yook Woon Andrew T.C. Saw & Co.

JUDGMENT

Haji Mohd Eusoff b. Chin SCJ:

It is not disputed that the five appellants received identical letters dated 31 October 1985, from their employer, which is the respondent to the effect that owing to economic downturn the firm was experiencing diminished workload and that this had caused the posts held by the five appellants to become redundant. As a result the respondent had to retrench the appellants and that they be paid retrenchment benefits.

On 12 November 1985, each of the appellants acknowledged by letter the receipt of retrenchment payments, but said they did so under protest. They then made a representation to the Director General of Industrial Relations that they considered themselves to have been dismissed without just cause or excuse and that they ought to be reinstated to their former employment. The Director General referred the matter to the Minister who after being satisfied, referred the dispute to the Industrial Court.

At the hearing before the Industrial Court, the respondent's learned Counsel raised a preliminary objection stating that the appellants were estopped from bringing the matter before the Industrial Court because they have already received their retrenchment payments. The Industrial Court's Award stated that on the preliminary objection alone, the appellants' claim should be dismissed. The learned High Court Judge when considering an application for *certiorari* to quash the award of the Industrial Court correctly decided that the Industrial Court committed an error going to jurisdiction because estoppel does not, under s. 30(5) of the Industrial Relations Act 1967, apply to industrial adjudication.

The learned Judge, however, having scrutinised the Industrial Court's award, stated that the Industrial Court had in its award dealt with the merits of the case as well, and that was because the parties before the Industrial Court had argued on the issue whether the termination of the employment of the appellants was in fact retrenchment. The learned Judge found that because the Industrial Court had dealt with the

merits of the case, he confirmed the dismissal of the applicants' claim by the Industrial Court.

Section 30(5) of the Industrial Relations Act 1967 states:

> 30(5) The Court shall Act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

Rule 22(1) and (2) of the Industrial Court Rules 1967 requires the President of the Industrial Court to call upon the parties before the Court to adduce evidence if any, to support their claims. The record shows that, because of the preliminary objection, there had been no evidence adduced by the appellants or the respondent before the Industrial Court. This is because the Industrial Court had not given the opportunity to either party to adduce any evidence. What happened was that upon the preliminary objection being raised by the learned Counsel for the respondent, the Court heard arguments based on the record and the pleadings only. This is the concluding paragraph of the award:

> Having given careful consideration to the state of the documentary evidence on record, the pleadings of the parties, and the submissions of both the learned Counsels, - indeed, to the case in all its circumstances - the Court agrees with the case for the company and dismisses the claimants' case.

We find that the Industrial Court had dismissed the appellants' claim purely on the ground of technicalities, i.e. on estoppel. The Industrial Court should have given the parties the opportunity to adduce evidence and then to decide on the evidence whether the termination was the result of genuine retrenchment exercise or dismissal without just cause. To determine the issue of whether it was retrenchment or dismissal, it is necessary for the Industrial Court to investigate the facts and analyse them and make its findings before applying the law to those findings - see *Hotel Malaya Sdn. Bhd. & Anor. v. National Union of Hotel, Bar and Restaurant Workers & Anor*. [1982] 2 MLJ 237, at 240. This, the Industrial Court had failed to do, and that is an error of law affecting its jurisdiction.

We, therefore, allow this appeal with costs here and in the High Court, and order the Industrial Court to hear and determine the dispute referred to it by the Minister in accordance with law.

NG CHAI KEM

lwn.

PENDAKWA RAYA

MAHKAMAH AGUNG, KUALA LUMPUR
TAN SRI DATUK GUNN CHIT TUAN HB (MALAYA), TAN SRI DATUK EDGAR JOSEPH JR. HMA, DATUK WIRA WAN YAHYA BIN PAWAN TEH HMA
[RAYUAN JENAYAH NO. 05-69-92]
6 DISEMBER 1993

DADAH BERBAHAYA: Tuduhan mengedar dadah berbahaya - Pemakaian anggapan statutori di bawah s. 37(d) & (da) Akta Dadah Berbahaya 1952 - Beban pembuktian yang wajar untuk mematahkan anggapan tersebut - Sama ada keterangan tertuduh bahawa ia seorang penagih dadah mencabar anggapan di bawah s. 37(da) Akta Dadah Berbahaya 1952 - Sama ada Mahkamah telah menimbangkan pembelaan tertuduh sebelum menjatuhkan hukuman.

PROSEDUR JENAYAH: Rayuan daripada keputusan Mahkamah perbicaraan - Keadaan di mana Mahkamah rayuan boleh mengubah keputusan Hakim perbicaraan ke atas fakta.

Tertuduh telah didapati bersalah oleh Mahkamah Tinggi atas tuduhan mengedar 37.26 gram dadah berbahaya dan seterusnya dihukum gantung sehingga mati di bawah peruntukan s. 39B Akta Dadah Berbahaya 1952 (Akta tersebut). Tertuduh telah membuat rayuan ke Mahkamah Agung.

Diputuskan:

[1] Dalam keadaan biasa dimana pihak pendakwa menggunakan anggapan statutori untuk membuktikan kesnya, satu penafian semata-mata oleh tertuduh, sama ada secara lisan ataupun secara implikasi dari keterangan yang bertentangan daripada fakta yang dianggap itu, mesti dianggap sebagai satu penyangkalan anggapan itu oleh pihak pembela. Dalam keadaan sedemikian Hakim perbicaraan adalah berkewajipan memeriksa semula pertikaian fakta yang mempengaruhi fakta yang di anggap itu, walaupun fakta yang dipertikaikan itu adalah kurang penting, dan membuat satu keputusan muktamad mengenainya diatas imbangan kebarangkalian. Kegagalan berbuat demikian akan merupakan satu penafian keadilan yang serius.

[2] Tertuduh telah memberi keterangan yang terperinci mengenai penglibatannya sebagai